ANNUAL ADDRESS

TO THE

GRADUATING CLASS

OF THE

Law Department of Columbian College,

WASHINGTON, D. C.,

BY

HON. ROBERT S. HALE,

Of New York,

JUNE 12, 1872.

PUBLISHED BY ORDER OF THE CLASS.

WASHINGTON, D. C.:
R. BEARESFORD, PRINTER, 1719 PENNSYLVANIA AVENUE.
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GRADUATES.

Name.	*Residence.*
ABBOTT, HOWARD S.	Pennsylvania.
ADDISON, W., Jr.	District of Columbia.
APPLETON, W. H.	New Hampshire.
ARNOLD, STARK W.	West Virginia.
BERRY, E. P.	District of Columbia.
BIXLER, J. W.	Indiana.
BLACK, L. C.	Ohio.
BOWEN, PAUL T.	Michigan.
BRICE, A. T.	Georgia.
BROWN, EUGENE J.	Ohio.
BURBAGE, W. D.	Ohio.
CAMPBELL, F. L.	Ohio.
CARPENTER, Z. T.	Connecticut.
CHEW, J. J.	District of Columbia.
CLARKE, LUKE	United States Army.
CLARK, W. P.	District of Columbia.
COON, B. C.	Wisconsin.
COWIE, L. T.	Iowa.
CRAGIN, C. H., Jr.	District of Columbia.
CRANE, WILLIAM F., Jr.	Pennsylvania.
CURTISS, H. R.	Connecticut.
DeCAMP, E. F.	New Jersey.
DeMATTOS, JAMES P.	Illinois.
DOUGLASS, SILAS J.	New York.
DOW, J. E.	District of Columbia.
DURNALL, J. B.	Colorado.
DYE, P. E.	Iowa.
EARLE, GEORGE	Maryland.
EATON, RAY P.	Maine.
FORNEY, PIERRE W.	Pennsylvania.
FOSTER, R. F.	District of Columbia.
FOWLER, EDWARD S.	New York.

Name.	*Residence.*
FUNK, LEE W.	Ohio.
GALPIN, S. A.	Connecticut.
HAYWARD, ALLEN B.	New Hampshire.
HENDRICKS, ARTHUR	New York.
HENSEY, T. G.	New York.
HOUSE, J. W.	Indiana.
HOWE, F. H.	Wisconsin.
JOHNSTON, J. M.	District of Columbia.
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KREIDLER, E. A.	New York.
LALLY, THOMAS R.	Delaware.
McLAIN, EDWIN J.	Maryland.
McKENNEY, W. A.	District of Columbia.
MEGUIRE, JAMES F.	Pennsylvania.
MIX, FRANK T.	District of Columbia.
MOSES, MONTAGUE T.	Wash. Territory.
NEWLANDS, JAMES	Illinois.
PARTRIDGE, G. W.	Michigan.
PINNEY, A. S.	Iowa.
PLATER, MAYHEW	Maryland.
POSTLEY, CHARLES E.	Tennessee.
POTTER, HENRY G.	Ohio.
QUAIFFE, ALFRED R.	New York.
REIGART, T. J.	Iowa.
RITTENHOUSE, SAMUEL W.	District of Columbia.
ROWE, W. H.	District of Columbia.
RYAN, MARTIN	Virginia.
SEAMAN, WILLIAM H.	New Jersey.
SICKLES, D. KINGSLEY	Michigan.
SKINNER, SAMUEL J.	North Carolina.
SMITH, WALTER V.	Oregon.
STEPHENSON, F. D.	Illinois.
TURRELL, J. D.	Michigan.
VANAERNAM, C. D.	New York.
WILLARD, THOMAS R.	Illinois.
WILLIAMS, ROGER	New York.
WORRELL, B. F.	New Jersey.

CORRESPONDENCE.

WASHINGTON, D. C., *July 12th*, 1872.

SIR:—On behalf of the graduates of Columbian College Law Department, Class of '72, I have the honor to request for publication a copy of your address delivered at the Annual Commencement, June 12th, 1872.

Very respectfully,

Your obedient servant,

LEE W. FUNK.

HON. ROBT. S. HALE.

WASHINGTON, D. C., *July 19th*, 1872.

SIR:—In compliance with your letter of 12th inst., requesting a copy of my address delivered at the Annual Commencement of the Columbian College Law Department, June 12th, 1872, I have the honor to enclose the same herewith.

Very respectfully,

Your obedient servant,

ROB. S. HALE.

LEE W. FUNK.

ADDRESS.

YOUNG GENTLEMEN OF THE GRADUATING CLASS:

Your term of pupilage has passed, and you are about to enter the ranks of the practitioners, *i.e.* the workers in the law; but it is to be trusted that in ceasing to be pupils you do not propose to cease to be students. To the faithful follower of either of the learned professions, study is to end only with his professional life. The instruction you have received in your prescribed course of lectures and text books has been, at best, but a meagre outline, to be filled up and rounded and enlarged by ceaseless study and observation and thought during your whole professional course.

We ordinarily speak of the study of the law as divided into two great branches, the theory and the practice; the first and larger branch including the whole range of legal dogmas and principles, by the application of which all legal questions and controversies are to be determined; the second confining itself to the more mechanical process of presenting the case in proper form, by process and pleading, by motions and rules, and applications and answers, judgments, executions and appeals, and all the complicated but often necessary machinery of the profession for the application of the principles to be derived from the theory of the law.

With too many these two divisions are considered as covering the whole range of legal study and acquirement; but there is another department, involving graver questions even than these, questions which may rightfully be called the "*weightier* matters of the law," and in comparison with which these questions of theory and practice, essential as they are, must be taken as the "*nient, arise* and *cumen*" of the profession. I refer to the ethics of legal practice, the moral obligations, rights and duties of the lawyer in his profession.

In proposing this as the subject of my brief discourse to you this evening, I must, of course, limit myself to the discussion of those principles of ethics which are of peculiar application to the lawyer. In doing this let me not be understood as ignoring or losing sight of that broad and universal field of ethics which includes man in all his relations. As the man includes the lawyer there is no topic pertaining to the moral relations of man which does not constitute a proper and indispensable subject of thought and study to the true lawyer.

But the limits permitted to an address of an evening will be found all too narrow for a bird's-eye-view even of ethical principles pertaining exclusively to your chosen profession, the moral relations of the lawyer to his clients, to the courts and to his profession, and his co-relative rights aud duties as to these.

The relation between lawyer and client has been often discussed, and in the opinions expressed concerning it, by those whose positions and characters would seem to entitle them to respect, there has been the widest difference.

It is a relation which has, in some respects, no parallel or analogy among all the other relations of life. When the client is driven to the courts to prosecute his rights, to defend himself against attempted wrongs, to vindicate his property, his reputation, his liberty or his life, from the sanctions of the laws with whose violation he is charged, he is driven of necessity to place himself and all that is his in the charge and control of his counsel. It is the place and office of the latter not merely to advise but to direct and control him so far as the management of his case is concerned. Nothing short of this absolute direction and control of the case can satisfy the just demands of the lawyer. Should it be refused in matters which he deems vital or material to the cause, he cannot with either safety or self respect remain in charge of it. His client is, therefore, so far as the case is concerned, delivered into his hands, bound hand and foot. This surrender of control carries with it, of course, corresponding responsibility and obligation, in the ratio of the importance of the interests involved. Where the consequences of the suit involve the life, the liberty, or other dearest and most important rights of the client, the weight of the responsibility can hardly be over estimated. The client has the right to demand labor, unremitting diligence, that shall never flag, ingenuity, study and knowledge, to the

extent not only of the lawyer's actual, but of his possible attainments; fidelity like that of the magnet, and secrecy like that of the grave.

In short, he has a right to demand every effort of mind and body from his lawyer, to the full extent of his mental and physical power, subject only to those limitations which are of universal and paramount obligation. It is as to the nature and extent of these limitations that the widest difference of opinion has existed among lawyers, and in regard to which misconception has often proven so nearly fatal to the reputations not only of individuals but of the profession.

The extravagant and monstrous propositions of Henry, afterwards Lord Brougham, on the trial of Queen Caroline, utterly ignoring all limitation of the obligation of lawyer to client, have oftener found followers in practice than open defenders in theory. The deliberate proposition that the lawyer owes it to his client to save him and his cause at whatever cost to the rest of mankind, at the expense of truth, justice and honesty, has been seldom vindicated in words since its hasty and ill-advised utterance by its author. But in practice it is to be feared that it has not been without its mischievous effect. To draw this line of demarkation, to determine accurately and carefully what things the lawyer may and what he may not do in the interest of his client, this is the difficult problem. It can only be solved by an appeal to obligations of higher origin and of wider application than those between the two parties in question. The lawyer must remember, that in becoming a lawyer, he has not ceased to be a man; that in assuming the obligations of the professional code, he has not discarded those higher obligations which bind the universal conscience of man; nay, that even in his professional character merely, he, as lawyer, has obligations to the court and to his profession which he may no more violate than his duty to his client.

He is not absolved from his obligation to truth, justice and fairness, and given over to the service of injustice and falsehood by his donning the advocate's robe and assuming the charge of the case of his client, even though that case involve all the earthly interests of the latter.

To follow to their fair and full results the doctrines thus propounded by Mr. Brougham, is to utterly confuse the moral sense, and to make the legal profession one which no honest man can follow. It is in the fancied discharge of a duty to one man, to ignore all duties to all other men, to

society and to God. It is to make the advocate the instrument of injustice and wrong, and not of justice and right.

The lawyer's duty to his client must be consistent with all his other duties; and being so, can never require him to pervert the law, to falsify the facts, to inflict unjustly "alarm, torment or destruction" upon others. It can never justify him in being "reckless of consequences," in disturbing the moral foundations of society, or in "involving his country in confusion." He is to serve his client faithfully and zealously as far as good morals, a regard for truth, his duty to the court, to his profession, to his fellow-men, to himself, and to his God will permit. He who goes beyond this in the hope of a temporary benefit to his client, is recreant to his highest duties.

The state of Vermont exacts from all admitted to practice in its courts the following oath:

"You solemnly swear that you will do no falsehood, nor consent that any be done in court, and if you know of any, you will give knowledge thereof to the Judges of the court, or some of them, that it may be reformed. You shall not wittingly, willingly, or knowingly promote, sue or procure to be sued any false or unlawful suit, or give aid or consent to the same. You shall delay no man for lucre or malice, but shall act in the office of attorney within the court according to your best learning and discretion, with all good fidelity as well to the court as to your client."

It may be said that this is narrowing too much the obligation of lawyer to client, and a suspicion may arise that with the practical carrying out of the obligations of this oath the lawyer will find his occupation gone. But this idea is based upon an exceedingly narrow and superficial knowledge of the true character of the vocation of the lawer in the conduct of causes before the courts. In fact litigation is not commonly, or indeed often a contest between knavery on the one side and innocence on the other; between unquestioned right in the one party and unqualified wrong in the other. Such cases, to the credit of humanity, are comparatively infrequent. The great mass of litigation, that is of questions to be determined by the court between litigant parties, are questions of partial and qualified right on each side, in which both plaintiff and defendant may not only believe most firmly in the justice of their respective claims, but in which their respective counsel, looking at the questions involved from different standpoints, attaching different

weight not only to the real or apparent facts of the case, but to the bearing and application of different legal principles to those facts, may well and honestly differ in their convictions as to the ultimate right of the case.

Nor does this difference of opinion, and the doubt as to the possible result of each individual case which follows from such difference of opinion, justify the often quoted and much abused taunt upon the "uncertainty of the law," for the law itself is in truth never uncertain. The law is fixed and absolute, but like all other subjects of moral science it is a complex, and not a simple, structure. Legal principles well settled, clear, absolute, each by itself, all true, all based on immutable and eternal right, running each in its proper and appropriate course, can never conflict with each other; for truth never conflicts with itself. But the facts of human experience, the combinations of circumstances attending every transaction of human life, are endless and infinite in their shapes and colors. Different legal principles applied to different phases of the facts which make up the whole of any case, may seem to conflict with each other, but the conflict is only seeming, and the true and great vocation of the lawyer in the management of causes is to separate the seeming from the real, to show which of the aspects of a case upon its facts is the one to which the legal principles controlling the case are to be applied, and so to determine what legal formula is the one applicable to the entire case, and which shall speak to it so as to carry the weight of an authoritative determination upon principles of universal application.

To borrow an illustration from the science of mechanics, different legal principles consistent each with the other, but independent in their action, and not moving in parallel lines, may be brought to bear upon the same state of facts. The case embodying these facts is the body to be moved. The line of its movement will not be the line of motion of either of the impelling forces by itself, but will be the resultant from them all, and that resultant is to be determined by the number of the moving forces, their line of motion, and the momentum of each. To find this *resultant line* of motion, to ascertain and establish the doctrine of the law which is deduced from all the principles applicable to all the facts of the case, this is the great problem of the lawyer. Surely in every case it gives sufficient scope for all the ability and learning, all the resources of study and ingenuity which

the lawyer can command, without driving him to fraud or perversion or casuistry.

It is sometimes said, on the other hand, that a lawyer should take no position for his client which he would not deem himself justified in taking for himself. This proposition goes to too great an extreme on the other hand.

There are many things which the most high minded and honorable of lawyers may and ought to do on behalf of his client which he would think it disgraceful to do in his own case. He may and ought to secure to his client the benefit of a legal right which he would think it shame for himself to allege in his own behalf. Take, for instance, the Statute of Limitations: an upright and honorable man will never avail himself of this statute to defraud a creditor of a debt which is honestly his due; but no lawyer could be justified in refusing to avail himself of such a statutory defence at the request of his client, even if he had reason to believe that the debt was in fact justly due. The Statute of Limitations is a wise statute. Whatever injustice it may work in particular cases, there can be no question that its general operation is in favor of right and justice; and when the law establishes this as a defence to a claim in a court of law, the lawyer is bound to give to his client demanding it, the benefit of the statute.

So, too, with the defence of usury. In those States where usury invalidates the entire debt, although an honorable man would not refuse to pay what is justly due to his creditor, even where the statute interposed the defence of a forfeiture by the reservation of unlawful interest, the lawyer is bound to urge and maintain this defence for his client as he would any other given him by the laws of the land; for it is to enforce and vindicate the laws that he keeps his position at the bar; and it does not rest with him to say "because I believe such a law may work injustice in this case, I will deprive my client of the benefit of it here."

Take the case of criminal prosecutions: the lawyer may be employed to defend, and it may become his duty to defend a person charged with crime, even where he is in his own mind fully convinced of his client's guilt. His client, if to be convicted and punished, is to be convicted and punished according to law. The lawyer is not made his judge, nor appointed to inflict upon him the penalty. His duty is to raise and submit to the court in his behalf, any and every legal question that may legitimately and fairly be submitted

to the consideration of the court as a protection to his client. While he may not pervert the law, nor falsify the facts, nor cast unjust imputation or suspicion upon others; while he may, in the language of the oath I have quoted, do no falsehood, nor consent that any be done in court, it is his duty to throw around his client in such case every shield and protection which the law may afford him; and if by the proper and legitimate use of his faculties and acquirements in such case the result may be the acquittal of one whom he believes to be a criminal, he does no wrong to the court, to his profession or to society. The merciful maxim of the law is that it is better that ten guilty persons should escape, rather than one innocent suffer; and it is by a careful and jealous guarding of the rules of law in favor of persons charged with crime, and by this means only, that the innocent may be properly protected.

The lawyer owes a duty, too, to the court before which he practices, and of which he is an officer. The bench and bar are parts of the same machinery for the administration of law and justice. They should never be in antagonism; but each in his proper sphere should be independent, and yet in accord as to their great common end in view. The judge has a right to depend on the bar for fair, candid and courteous treatment. While the lawyer should always present to the court every legitimate consideration favorable to the cause of his client, while he should serve the latter with all diligence and zeal, he must never forget that to the court he owes a truthful and candid dealing. He may urge upon the court the importance of any legal principle that he deems to have a favorable bearing towards his client's case; but he must never attempt to distort or misrepresent the law, or to falsify the facts of his case. Whoever attempts this should, and, in the case of a competent and upright judge, always will, bring upon himself merited rebuke. The confidence of the court is the strong panoply with which the upright and able lawyer seeks always to cover himself.

Perfect integrity of character and conduct is, of course, due from the lawyer to his client, to the court, and to the profession, as it is due from every man to every other man in all the relations of life. Time will permit me to note but one of the phases in which this requirement should be borne in mind by every lawyer.

As we have seen, the obligations of the lawyer to his client are qualified and limited by the duties which he owes to the

court and to the profession, as well as by his general moral obligations. But in the zeal and anxiety of the advocate for the interests and success of his client, there is always danger that the obligation to the client, as the nearer, the more pressing, the more urged by present and immediate demands, will over-reach and encroach upon his obligations to others. To guard against this tendency, one rule should be rigidly adhered to by every lawyer who desires to faithfully observe all his obligations. He should keep aloof from every interest in his client's cause, except his interest as a lawyer, under the pressing obligations I have already named.

It has long been a proverb, as truthful as homely, that "the lawyer who tries his own cause has a fool for a client."

Personal and pecuniary interest in the result of a trial has been found, by universal experience, to lead, almost invariably, to the over-stepping of the line of duty by the lawyer. It was mainly in this regard, though other wise considerations were added in the same direction, that the laws of champerty and maintenance have been for centuries established in England and in most of the United States, as safeguards to lawyers, clients and courts. The lawyer who contracts with his client to take a share in the results of the litigation,—to divide the proceeds of the suit, or to make his compensation depend on the results of the legal contest, —disqualifies himself from fair and upright and honest action in the case. He is no longer the officer of the law, doing his duty justly, firmly and discriminatingly by court and client and associates at the bar. He has become a party, swayed by personal interests, not entitled to ask or expect the confidence of the court, and is degraded from the high position which he ought to occupy.

I know that these ideas may seem to some exceedingly "old fashioned;" many will, perhaps, regard them as of the very Pharisaism of the law. I know how common and widespread have become the practices I am condemning; but I also know that the sentiments I express are to-day, as they have been for centuries, the doctrines of the wisest, best and purest of the profession.

I beg you, young gentlemen, let no taunt or scoff drive you from adherence to these principles, so imperfectly and crudely outlined. Cherish them; and adopt each for yourself the maxim of the great dramatist, "To thine own self be true, thou canst not then be false to any man."